

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM R. MITCHELL)
Petitioner,)

-V-)

LUIS SPENCER,)
Superintendent/MCI-)
Norfolk,)
Respondent.)

CIVIL ACTION
NO. _____

PETITIONER'S MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. §1951(a)


NOW COMES the Petitioner, William R. Mitchell, in the above-entitled matter, and he does hereby respectfully move this Honorable Court pursuant to 28 U.S.C. §1951(a), and Fed.R.App.P. Rule 24(b), for leave to proceed in forma pauperis and file the instant petition without prepayment of filing fees, court fees, or any other filing fees related to this action.

The affidavit in support of this motion is attached hereto. The Grounds for this motion are stated in the attached affidavit in support thereof.

WHEREFORE, the petitioner prays that his Motion For Leave To Proceed In Forma Pauperis Pursuant to 28 U.S.C. §1951(a) be ALLOWED.

Respectfully submitted
by the Petitioner,

Dated: April 21, 2004


William R. Mitchell, pro-se
P.O. Box 43
Norfolk, MA 02056

**Affidavit to Accompany
Motion for Leave to Proceed in Forma Pauperis**

United States District Court

District Court No. ?
Appeal No.

William R. Mitchell

v.

Luis Spencer, Superintendent/MCI-Norfolk

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: William R. Mitchell

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: April 21, 2004

My issues on appeal are: Massachusetts Superior Court's erroneous jury instruction on reasonable provocation and manslaughter. Evidence warranting such an instruction and conflicting language causing confusions to the jury in violation of due process/14th Amendment.

1. For both you and you spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly amount during the past 12 months | Amount expected next month |
|------------------------------------------------------|-----------------------------------------------------|----------------------------|
| | You | You |
| Employment | \$ <u>None</u> | \$ <u>None</u> |
| Self-employment | \$ <u>None</u> | \$ <u>None</u> |
| Income from real property (such as rental income) | \$ <u>None</u> | \$ <u>None</u> |
| Interest and dividends | \$ <u>None</u> | \$ <u>None</u> |

| | | |
|----------------------------------------------------------------------|-----------------|----------------|
| Gifts | \$ <u>20.00</u> | \$ <u>None</u> |
| Alimony | \$ <u>None</u> | \$ <u>None</u> |
| Child support | \$ <u>None</u> | \$ <u>None</u> |
| Retirement (such as social security, pensions, annuities, insurance) | \$ <u>None</u> | \$ <u>None</u> |
| Disability (such as social security, insurance payments) | \$ <u>None</u> | \$ <u>None</u> |
| Unemployment payments | \$ <u>None</u> | \$ <u>None</u> |
| Public-assistance (such as welfare) | \$ <u>None</u> | \$ <u>None</u> |
| Other (specify): _____ | \$ <u>None</u> | \$ <u>None</u> |
| Total Monthly income: | \$ <u>20.00</u> | \$ <u>None</u> |

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-------------|-------------|---------------------|-------------------|
| <u>None</u> | <u>None</u> | <u>None</u> | <u>None</u> |
| ***** | ***** | ***** | ***** |
| ***** | ***** | ***** | ***** |
| ***** | ***** | ***** | ***** |

3. List your spouses's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-------------|-------------|---------------------|-------------------|
| <u>None</u> | <u>None</u> | <u>None</u> | <u>None</u> |
| ***** | ***** | ***** | ***** |
| ***** | ***** | ***** | ***** |
| ***** | ***** | ***** | ***** |

4. How much cash do you and your spouse have? \$ None

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Financial Institution | Type of Account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|-----------------|------------------------|
| None | None | \$ None | \$ None |
| None | None | \$ None | \$ None |
| None | None | \$ None | \$ None |

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you or your spouse owns. Do not list clothing and ordinary household furnishings.

| Home | (Value) | Other real estate | (Value) | Motor Vehicle #1 | (Value) |
|---------------------|---------|-------------------|---------|---------------------|---------|
| None | | None | | Make & year: None | |
| None | | None | | Model: None | |
| None | | None | | Registration#: None | |
| Motor Vehicle #2 | (Value) | Other assets | (Value) | Other assets | (Value) |
| Make & year: None | | None | | None | None |
| Model: None | | None | | None | None |
| Registration#: None | | None | | None | None |

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| None | None | None |
| None | None | None |
| None | None | None |

7. State the persons who rely on you or your spouse for support.

| Name | Relationship | Age |
|------|--------------|------|
| None | None | None |
| None | None | None |
| None | None | None |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

| | You | Spouse |
|---------------------------------------------------------------------------------------------------------|----------------|----------------|
| Rent or home mortgage payment (include lot rented for mobile home) | \$ <u>None</u> | \$ <u>None</u> |
| Are any real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| Utilities (electricity, heating fuel, water, sewer, and Telephone) | \$ <u>None</u> | \$ <u>None</u> |
| Home maintenance (repairs and upkeep) | \$ <u>None</u> | \$ <u>None</u> |
| Food | \$ <u>None</u> | \$ <u>None</u> |
| Clothing | \$ <u>None</u> | \$ <u>None</u> |
| Laundry and dry-cleaning | \$ <u>None</u> | \$ <u>None</u> |
| Medical and dental expenses | \$ <u>None</u> | \$ <u>None</u> |
| Transportation (not including motor vehicle payments) | \$ <u>None</u> | \$ <u>None</u> |
| Recreation, entertainment, newspapers, magazines, etc. | \$ <u>None</u> | \$ <u>None</u> |
| Insurance (not deducted from wages or included in Mortgage payments) | \$ <u>None</u> | \$ <u>None</u> |
| Homeowner's or renter's | \$ <u>None</u> | \$ <u>None</u> |
| Life | \$ <u>None</u> | \$ <u>None</u> |
| Health | \$ <u>None</u> | \$ <u>None</u> |
| Motor Vehicle | \$ <u>None</u> | \$ <u>None</u> |
| Other: <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| Taxes (not deducted from wages or included in Mortgage payments)(specify): <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| Installment payments | | \$ <u>None</u> |
| | | \$ <u>None</u> |
| Motor Vehicle | \$ <u>None</u> | \$ <u>None</u> |
| Credit card (name): <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |

| | | | |
|----------------------------------------------------------------------------------------------|-------------|----------------|----------------|
| Department store (name): | <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| Other: | <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| Alimony, maintenance, and support paid to others | | \$ <u>None</u> | \$ <u>None</u> |
| Regular expenses for operations of business, profession, or farm (attach detailed statement) | | \$ <u>None</u> | \$ <u>None</u> |
| Other (specify): | <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| Total monthly expenses: | | \$ <u>None</u> | \$ <u>None</u> |

9. Do you expect any major changes to your monthly income or expenses in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? \$ None

If yes, state the attorney's name, address, and telephone number:

None

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? \$ None

If yes, state the person's name, address, and telephone number:

None

12. Provide any other information that will help explain why you cannot pay the docket fees for your ~~appeal~~ Petition.

I am an indigent, incarcerated prisoner serving a life sentence. I receive very little help from my family.

13. State the address of your legal residence.

Norfolk State Prison

P.O. Box 43, Norfolk, MA 02056

Your daytime phone number: (XXX) None

Your age: 49 **Your years of schooling: 9th Grade**

Your social security number: 029-42-4996